

**NOTICE OF PROPOSED RULEMAKING
AMENDING REGULATIONS IMPLEMENTING
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

NOTICE IS HEREBY GIVEN that the Resources Agency proposes to adopt and amend regulations implementing Division 13 of the Public Resources Code, the California Environmental Quality Act (CEQA), as described below.

STATUTORY AUTHORITY

Public Resources Code section 21083 mandated adoption of regulations (CEQA Guidelines) implementing CEQA. The CEQA Guidelines are codified in California Code of Regulations (CCR), Title 14, sections 15000-15387.

Pursuant to section 21080.5 of the Public Resources Code, the Secretary for Resources (“Secretary”) may certify regulatory programs of state agencies as meeting standards that are equivalent to the environmental review process required by the California Environmental Quality Act (“CEQA”), Public Resources Code, section 21000, *et seq.* Regulatory programs that have been certified by the Secretary are exempt from procedural requirements in Chapter 3 of CEQA, as well as certain other provisions in CEQA. Section 21080.5, subdivision (e) of the Public Resources Code, provides that the Secretary must withdraw certification if the Secretary determines that the regulatory program no longer meets the criteria for certification. Certification and withdrawal of certification must comply with Chapter 3.5 of the Government Code.

Pursuant to section 21080.5, the Secretary has certified sixteen programs listed at section 15251 of Title 14 of the California Code of Regulations, Guidelines implementing the California Environmental Quality Act (“CEQA Guidelines”).

PROPOSED REGULATORY ACTION

The proposed action is intended to amend subdivision (j) and subdivision (h) of section 15251 of Title 14 of the California Code of Regulations.

PUBLIC HEARING

A public hearing is not scheduled. Any interested person or his or her duly authorized representative may request, in writing, no later than 15 days prior to the close of the written comment period, a public hearing.

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed revisions to the Resources Agency. Written comments must be received by the Resources Agency not later than 5:00 p.m. on **May 22, 2006** in order to be considered by

the Agency. Written comments may be delivered, mailed, or transmitted by facsimile or electronic mail. Written comments should be addressed as follows:

Sandra Ikuta, Deputy Secretary and General Counsel
The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

INQUIRIES AND ADDITIONAL INFORMATION

Inquiries relating to the proposed administrative action may be directed to Mary Akens, Assistant General Counsel, at (916) 653-5656.

The Agency has prepared an Initial Statement of Reasons for the proposed action that provides an explanation of the purpose and justification for the proposed rulemaking. Anyone may view and print a copy of the statement or the text of the proposed revisions by accessing the following page on the Agency's Internet website:

www.ceres.ca.gov/ceqa/index.html. Copies of the initial statement and text of the regulations are also available upon request from Mary Akens, Assistant General Counsel, at (916) 653-5656. The entire rulemaking file is available for public inspection at 1416 Ninth Street, Suite 1311, Sacramento, California 95814.

The Agency will post the Final Statement of Reasons and any future notices related to the proposed action on the Agency's Internet website. Anyone wishing to receive future notices related to the proposed action and/or receive a copy of the Final Statement of Reasons once it has been prepared should submit a written request containing his or her postal mailing address to Mary Akens, Assistant General Counsel, Resources Agency, State of California, 1416 Ninth Street, Suite 1311, Sacramento, California 95814. These requests can also be submitted by fax at (916) 653-8123.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CEQA (Pub. Resources Code, § 21000, *et seq.*) requires public agencies to identify potential environmental effects of activities that they propose to carry out, fund, or approve, and to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. CEQA compliance usually involves preparation by a public agency of either a negative declaration, mitigated negative declaration, or an environmental impact report. CEQA requires the Secretary for Resources, in consultation with the Governor's Office of Planning and Research (OPR), to periodically adopt, amend, and repeal the CEQA Guidelines. Section 20180.5 of the California Public Resources Code provides that when a regulatory program of a state agency requires the agency to submit a plan or other written document in support of specified activities, and such regulatory program is certified by the Secretary for Resources ("Secretary") pursuant to Section 20180.5, the regulatory

program is exempt from specified sections of CEQA, Public Resources Code, section 21000, et seq. Section 21080.5, subdivision (e) of the Public Resources Code, provides that the Secretary must withdraw certification if the Secretary determines that the regulatory program no longer meets the criteria for certification. Certification and withdrawal of certification must comply with Chapter 3.5 of the Government Code.

Section 15251 is the section identified for amendment during this rulemaking. It is the intent of the Secretary for Resources that the proposed revisions will amend subdivision (h) and repeal subdivision (j) of section 15251 of the Guidelines. The remaining subdivisions within section 15251 will be updated to reflect correct numbering due to the repeal of subdivision (j) of section 15251 of the Guidelines.

It is the intent of the Secretary for Resources that the proposed revisions shall clarify the Guidelines and, where appropriate, update the Guidelines consistent with statutory revisions.

The following summaries describe existing laws and regulations related to the proposed action and explain the effect of the proposed revisions. Also included, where appropriate, are the specific objectives of the revisions.

15251. List of Certified Programs.

Section 15251 of the California Code of Regulations provides a list of programs that have been certified by the Secretary for Resources as meeting the requirements of Section 21080.5 of the Public Resources Code.

a. Section 15251, subd. (h).

Subdivision (h) of section 15251 lists the permit and planning program of the San Francisco Bay Conservation and Development Commission (BCDC) under the McAteer-Petris Act, Title 7.2 (commencing with Section 66600) of the Government Code and the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code.

The authorities for the proposed amendments are Public Resources Code, sections 21080.5 and 21083. This amendment will update and clarify the section by withdrawing certification of the permit program of the San Francisco Bay Conservation and Development Commission under the Suisun Marsh Preservation Act, Division 19 (commencing with Section 29000) of the Public Resources Code. In order to enhance the transparency of its compliance with CEQA, BCDC has decided that in the future it will implement the general CEQA requirements set forth in the Public Resources Code (commencing with Section 21000) and BCDC's regulatory provisions (commencing with 14 CCR Section 10110), and no longer intends to rely on its certified regulatory program for the permit program under the Suisun Marsh Preservation Act. For this reason, BCDC has requested the Secretary of the Resources Agency withdraw certification of this component of its certified regulatory program.

The remainder of section 15251(h) of the CEQA Guidelines dealing with planning under the Suisun Marsh Preservation Act and the permit and planning programs of the San Francisco Bay Conservation and Development Commission under the McAteer-Petris Act, Title 7.2 (commencing with section 66600) of the Government Code are not affected by this proposed withdrawal of certification.

b. Section 15251, subd. (j)

Subdivision (j) of Section 15251 lists the certified program for the regulation of weather resources management projects through the issuance of operating permits by the State Department of Water Resources (DWR) pursuant to the California Weather Resources Management Act of 1978.

The authorities for the proposed amendments are Public Resources Code, sections 21080.5 and 21083. This amendment will update and clarify the section by withdrawing certification of the regulatory program governing the regulation of weather resources management projects through the issuance of operating permits (certified at Section 15251(j) of title 14 of the California Code of Regulations) because the program is defunct. In 1984 the Legislature eliminated the statutory licensing and permit requirements for the weather management project (sections 403-409 of the California Water Code), and DWR subsequently repealed its regulations implementing the program. Accordingly, the Secretary must withdraw certification upon determining that the regulatory program has been altered so that it no longer meets the specified qualifications. Because the statutory licensing and permit requirements for the weather management project have been repealed, and DWR subsequently repealed its regulations implementing the program, the Secretary must withdraw certification.

FEDERAL REGULATION AND STATUTE

CEQA is similar in some respects to the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq. (NEPA), but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. The proposed Guideline amendments do not duplicate or conflict with any federal statutes or regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Agency has made the following determinations concerning the proposed changes to the Guidelines:

Mandates on Local Agencies and School Districts

The Agency has determined that the proposed revisions to the CEQA Guidelines will not impose a mandate on local agencies or school districts.

Costs or Savings to Local Agencies and School Districts or Federal Funding to the State of California Resources Agency

No costs or savings have been identified from the proposed action for any state agency, local agency, or school district. No reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscriminatory costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

Significant Adverse Economic Impacts on Business

The Agency has initially determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The factual basis for this conclusion is that the revisions will update and clarify the two subdivisions within section 15251 of the CEQA Guidelines.

Cost Impacts on a Representative Person or Business

The Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs

The Agency has made an initial determination that the proposed action will not have an adverse impact on housing costs.

Assessment of Potential to Create or Eliminate Jobs or Businesses Within the State of California Resources Agency

The Agency has assessed the potential for the proposed action to adversely affect California business enterprises and individuals, including whether it will affect the creation or elimination of jobs or the creation, elimination or expansion of businesses, as required by subdivision (b) of Government Code Section 11346.3. The proposed action

is not expected to have a positive or adverse effect on the creation or elimination of jobs or businesses within California. The Agency has also concluded that the proposed amendments will not affect the expansion of businesses currently doing business within the state.

The Agency's complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action is part of the rulemaking file, and it is available from the Agency contact person named in this notice.

Effect on Small Businesses

The proposed actions will not affect small business because the revisions will update, clarify, and streamline the way that public agencies administer the CEQA process.

CONSIDERATION OF ALTERNATIVES

The Secretary has considered the alternative of taking no action. With respect to DWR's request, the no-action alternative would be not to withdraw certification of DWR's regulatory program governing the regulation of weather resources management projects through the issuance of operating permits. The Secretary has rejected this alternative, because under section 21080.5(e) of the Public Resources Code, the Secretary must withdraw certification upon determining that the regulatory program has been altered so that it no longer meets the specified qualifications. Because the statutory licensing and permit requirements for the weather management project have been repealed, and DWR subsequently repealed its regulations implementing the program, the Secretary must withdraw certification.

With respect to BCDC's request, the alternative would be not to withdraw certification of BCDC's permit program under the Suisun Marsh Preservation Act. The Secretary has rejected this alternative because BCDC no longer intends to rely on its certified regulatory program in issuing permits under the Suisun Marsh Preservation Act. Instead, BCDC will comply with the applicable provisions of CEQA. BCDC has informed the Secretary that this decision is intended to enhance the transparency of BCDC's CEQA process. The failure to withdraw certification of BCDC's permit program under the Suisun Marsh Preservation Act, which BCDC will no longer use, would be confusing to the public and would interfere with BCDC's goal of enhancing the transparency of its process. Accordingly, Secretary has determined it is necessary to withdraw certification of this program.

ALTERNATIVES TO REDUCE IMPACTS ON SMALL BUSINESSES

Reasonable alternatives to lessen adverse economic impacts on small businesses were not identified for the proposed action. The proposed action would not have an adverse economic impact on businesses.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

If the Agency makes changes in the text of any proposed regulation, the revised text will be available to the public at least fifteen (15) days prior to the date when the Agency considers the proposed regulations for adoption, amendment, or repeal, unless the change is nonsubstantial or solely grammatical in nature. Changes must be sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action.

PLAIN ENGLISH DETERMINATION AND AVAILABILITY OF TEXT

The proposed final regulations were prepared pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2(a)(1). The proposed regulations are considered non-technical and were written to be easily understood by the parties that will use them. The purpose of the proposed changes to the Guidelines is to interpret the requirements of CEQA and to provide a comprehensive point of reference for those who are affected by CEQA's mandates, both in government and the private sector. Specifically, the proposed changes will make it more clear what lead agencies and project applicants must do to comply with CEQA.

The text of the proposed changes to the Guidelines has been drafted, and is available in plain English. The text is available through the contact address and telephone number listed herein or on the CEQA website at www.ceres.ca.gov/ceqa/index.html.